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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/825,997   | 04/05/2001  | Robert Gentile       | M4065.0417/P417     | 3856             |
| 24998  | 7590        | 02/09/2007           | EXAMINER            |                  |
| DICKSTEIN SHAPIRO LLP<br>1825 EYE STREET NW<br>Washington, DC 20006-5403 |             |                      | CHU, GABRIEL L      |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 2114                |                  |
| SHORTENED STATUTORY PERIOD OF RESPONSE                                   | MAIL DATE   |                      | DELIVERY MODE       |                  |
| 3 MONTHS   | 02/09/2007  |                      | PAPER               |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

|                              |                            |                  |
|------------------------------|----------------------------|------------------|
| <b>Office Action Summary</b> | Application No.            | Applicant(s)     |
|                              | 09/825,997                 | GENTILE, ROBERT  |
|                              | Examiner<br>Gabriel L. Chu | Art Unit<br>2114 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 December 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-52 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-52 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 25 April 2001 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 1-52 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.** See previous office action.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. **Claims 1-14, 24-48 rejected under 35 U.S.C. 102(e) as being anticipated by US 6314455 to Cromer et al.** See previous office action.

### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. **Claims 15-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6314455 to Cromer et al. in view of JP409258965A to Aoki.** See previous office action.

7. **Claims 49, 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6314455 to Cromer et al. further in view of US 5319519 to Sheppard et al.**

See previous office action.

8. **Claims 51, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6314455 to Cromer et al. in view of JP409258965A to Aoki as applied to claim 15 above, and further in view of US 5319519 to Sheppard et al.** See previous office action.

***Response to Arguments***

9. Applicant's arguments filed 19 December 2006 have been fully considered but they are not persuasive.

10. Regarding Applicant's argument I/II that Cromer describes a word "reset" that includes rebooting the computer, Applicant has herein identified that Cromer has specifically differentiated the terms "reset" and "reboot". Further, Applicant has in no way shown that the "boot process begin[ning]" as disclosed by Cromer is the same or different than a "reboot" as intended by Applicant. Clearly, if a computer is reset, something that may be identified as a "boot process" should begin, and in Cromer this is illustrated, for example, in figure 4. That a boot process may begin is not the same as "rebooting" a computer. Further, quite clearly, in figure 4, Cromer shows the "boot" of the operating system in step 410, as differentiated from other instances of resetting such as step 420 or step 428.

As an analogy, does Applicant see the difference between “curing the patient of a disease” and “beginning to cure the patient of a disease”?

11. Regarding Applicant’s argument IV that “one skilled in the art could have reasonably concluded that the inventor had possession” because the flowchart of figure 1 of Applicant’s figures shows “rebooting only ‘once’”, “rebooting” and “once” are both well defined terms of art and language, and in view of their meanings, as intimated previously, Applicant has not shown support for this. While one of ordinary skill could certainly create the claimed invention from Applicant’s specification (this forms the basis of 103 practice), Examiner puts forth this is not the *only* conclusion that may be drawn from Applicant’s specification. Absent such a conclusion, there is no clear indication of possession; there is no inherency.

Further, Applicant argues that rebooting the computer a second time after determining the BIOS is corrupt and before said programming “would trap the computer in an endless loop”, this is purely speculation, and largely based on Applicant’s incorrect interpretation of the terms “reset” and “reboot”.

12. Examiner believes that all avenues of prosecution for this application have been exhausted. As was suggested before, Examiner recommends either abandonment or appeal.

### ***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gabriel L. Chu  
Primary Examiner  
Art Unit 2114

gc